



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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 www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 14, 2021
Sent via email

Governor’s Office of Planning & Research

Apr 14 2021

Steve Karamitros
 Project Planner
 Inyo County Planning Department
 168 North Edwards St.
 P.O. Drawer “L”
 Independence, CA 93526

STATE CLEARINGHOUSE

Chief Farms, LLC. (Project)
 Negative Declaration (ND)
 SCH# 20201030564

Dear Mr. Karamitros:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from Inyo County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife; CDFW appreciates the opportunity to respond the Draft ND. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California’s Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Chief Farms, LLC.

Project Description: A complete project description is not provided in the Draft ND. According to the Draft ND, construction is proposed for (1) 840 ft² residential building for staff (960 ft² according to the geotechnical report), (1) 1,440 ft² manufacturing building, and (5) 3,060 ft² greenhouses for cultivation. None of the proposed buildings are planned to exceed 23-feet in height. Additionally, according to the geotechnical report provided by BSK Associates, the project will include construction of a parking lot, installation of an agricultural runoff basin, and a septic tank and with a leach field to the East of the buildings. Water for the site would be provided by a pre-existing, on-site well. Agricultural runoff would be managed via surface retention tanks and pumped and hauled to certified disposal facilities.

Location: 50 West Nine Mile Canyon Rd., Pearsonville, CA 93527 in Inyo County; APN 037-203-05; GPS Coordinates: 35°50'28.8"N 117°52'36.6"W. The vacant Project parcel is located at the Southwest corner of the intersection of Nine Mile Canyon Rd and Sterling Rd. to the west of Highway 395. The Project parcel is bordered to the north by Nine Mile Canyon Rd. and open state-owned land, to the west by open Bureau of Land Management (BLM) land, to the south by open BLM and privately owned land, and to the east by Highway 395 and open BLM and privately owned land. The Project parcel is in the southeastern portion of the Nine Mile Canyon (HUC 12) subwatershed. The area surrounding the Project parcel is surrounded by open desert in an alluvial basin approximately 11 miles north of Inyokern, CA.

Timeframe: No timeframe given in the Draft ND.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Inyo County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW is also concerned that potential cannabis related biological impacts and corresponding mitigation are not identified in the Draft ND.

In addition to the sections below, CDFW is concerned with the lack of detail in the Project description provided in the Draft ND, as well as conflicting Project descriptions in the Draft ND and the Geotechnical Report. Additionally, no site diagram was provided to specify where on the parcel planned construction will take place. The geotechnical survey was done exclusively in the northern half of the parcel while the Mohave ground squirrel (MGS) survey was completed only in the southern half of the parcel and no explanation was provided. The Draft ND does not mention driveways, fencing, landscaping, or other Project infrastructure. Additionally, no timeline for construction and implementation of the Project was given in the Draft ND. The biological assessment and MGS surveys are outdated (completed over two years ago) and site conditions may have changed. CDFW generally considers survey results valid for one year. The Draft ND does not provide enough information to fully assess potentially significant impacts. CDFW requests that the Draft ND be revised to include a detailed project description addressing the above comments including a detailed site map, a project timeline, and an updated habitat assessment and biological survey to reflect any changes that may have occurred on the Project site.

CDFW is concerned about the appropriateness of an ND for the Project and that there are no mitigation measures in place. In addition to the information requested above to assist in identifying all potentially significant impacts, CDFW suggests mitigation measures BIO-1 through BIO-9 below.

ASSESSMENT OF IMPACTS ON BIOLOGICAL RESOURCES

California Endangered Species Act (CESA)

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate species of plant and animal species, pursuant to CESA. CDFW recommends that an incidental Take Permit (ITP) be obtained if the Project has potential to “take” (California Fish and Game Code Section 86 defines “take” as hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill) state-listed CESA species, either through construction or over the life of the property. CESA ITPs are issued to protect, conserve, enhance, and restore state listed CESA species and their habitats.

Biological Surveys

A biological assessment was conducted by zoologist Dr. Peter Bloom (Bloom Biological, Inc.), from 0730-1330 on March 8, 2019 (Section IV. Biological Resources of the Draft ND, pg. 9) on the 18-acre site. The biological assessment was conducted in winter in temperatures that were likely too cold for wildlife to be active (35-50 degrees Fahrenheit), and may not be an accurate representation of wildlife use of the site. The biological assessment states “Temperatures during visit were too cold for any mammals, reptiles or amphibian to be active”. CDFW is concerned about the adequacy of the biological surveys to identify wildlife resources on the Project site and requests biological surveys be conducted as specified in proposed mitigation measures BIO-1 through BIO-4 below.

Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

On April 5, 2019, the site was surveyed for MGS by Pacific BioScience, Inc. biologist Jeff Johnson. The initial MGS survey was only conducted on the southern half of the property with no and returned no observations. Following the survey, MGS live trapping was conducted by Jeff Johnson over three sessions: April 6-10, May 8-12, and June 15-19, 2019. Although no MGS were trapped or observed during these sessions, both the biological assessment and the MGS survey were completed two years ago, and thus would no longer be considered valid by CDFW standards. The Draft ND states "It has been concluded that habitat does exist that could support MGS; therefore, further focused protocol surveys will be conducted, prior to the start of construction, to confirm MGS absence" (Section IV. Biological Resources, pg 9). However, no MGS preconstruction surveys were included in the document as a mitigation measure. CDFW recommends adding the following mitigation measure:

MM BIO-1: Preconstruction surveys following the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010 or most recent version) shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the qualified biologist shall notify CDFW and the Project proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-1. The draft MMRP with MM BIO-1 through MM BIO-9 is enclosed as Attachment 1 at the end of this letter.

Desert Tortoise (*Gopherus agassizii*)

Desert tortoises are listed as Threatened under CESA and the Project location is within desert tortoise habitat. A general biological assessment for multiple species was conducted by Bloom Biological, Inc. zoologist Dr. Peter Bloom on March 8, 2019 on the Project site. While no evidence of living tortoises was found at that time, the Project site occurs within the Western Mojave Recovery Unit (USFWS 2011). With temperatures between 35 and 50 degrees Fahrenheit, desert tortoise would not have been active at the time of the biological assessment. The most recent update to USFWS *Mojave Desert Tortoise Pre-project Survey Protocol* states, "The most effective way to estimate abundance of tortoises is to conduct surveys when tortoises are most active" (USFWS 2018). Given the potential for desert tortoise to be found on the site during the life of the Project, CDFW requests that a qualified biologist conducts a protocol level survey according to the USFWS Desert Tortoise (Mojave Population) Field Manual. CDFW recommends the following mitigation measure be added to the Draft ND:

MM BIO-2: A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with procedures described in Chapter 6 of the

US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an Incidental Take Permit (ITP) for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.

Nesting Birds

The Draft ND proposes no mitigation measures to avoid or minimize potentially significant impacts to nesting birds. According to the biological assessment “Only two species of birds were observed during the survey, neither of which nest on-site, however, another 10 nesting bird species might arrive in spring, and another 60 migratory bird species regularly fly over, and some might pause on-site” (Results section, pg 2). CDFW requests that preconstruction nesting bird surveys be conducted and recommends that the following mitigation measure be added to the Draft ND:

MM BIO-3: Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair’s behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season (February 1 through September 1).

Rare and Sensitive Plants

The Draft ND should include measures to fully avoid and otherwise protect rare and sensitive plant species from Project-related direct and indirect impacts. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the

criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. According to a California Natural Diversity Database (CNDDDB) query using BIOS mapping software, Charlotte's phacelia (*Phacelia nashiana*, CNPS 1B.2 plant species) and western Joshua tree (*Yucca brevifolia*, candidate threatened species under CESA) may be likely to occur within or in close proximity to the Project site. CDFW recommends that the Draft ND include information describing how the Project will avoid impacts to these species.

After reviewing the Biological Assessment provided by Bloom Biological, Inc., CDFW is concerned with the presumption of low likelihood of occurrence for many sensitive plant species in the project area. CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (2018 or most recent version; <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) states, "The failure to locate a known special status plant occurrence during one field season does not constitute evidence that this plant occurrence no longer exists at this location, particularly if adverse conditions are present." CDFW is concerned that the plant survey took place as part of a general biological assessment in the winter. CDFW requests that a thorough assessment of special status plant species and communities be conducted prior to Project activities and recommends the following mitigation measure be included in the Draft ND:

MM BIO-4: A thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018) or most recent version shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project Area, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project Area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.

Minimizing Impacts to Other Species

The biological assessment states that 8 small mammal species and rabbits are likely found on site, and that 10 species of reptiles have distributions that suggest they are found in the

immediate vicinity. According to a California Natural Diversity Database (CNDDDB) query using BIOS mapping software, CDFW Species of Special Concern Le Conte's thrasher (*Toxostoma lecontei*), Southern Sierra legless lizard (*Anniella campii*), and coast horned lizard (*Phrynosoma blainvillii*) may occur in proximity to the site. Because of the potential for these and other special status species to occur on-site, CDFW recommends inclusion of the following mitigation measure:

MM BIO-5: A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization by CDFW shall move CESA-listed species.

Pesticides, Including Fungicides, Herbicides, Insecticides, and Rodenticides

Cannabis cultivation sites (whether indoor or outdoor) often use substantial quantities of pesticides, including fungicides, herbicides, insecticides, and rodenticides. Wildlife, including beneficial arthropods, birds, mammals, amphibians, reptiles, and fish, can be poisoned by pesticides after exposure to a toxic dose through ingestion, inhalation, or dermal contact (Fleischli et al. 2004, Pimentel 2005, Berny 2007). They can also experience secondary poisoning through feeding on animals that have been directly exposed to the pesticides. Even if used indoors, pesticides such as rodenticides may result in secondary poisoning through ingestion of sickened animals that leave the premises or ingestion of lethally poisoned animals that are disposed of outside. Even nonlethal doses of pesticides can negatively affect wildlife; pesticides can compromise immune systems, cause hormone imbalances, affect reproduction, and alter growth rates of many wildlife species (Pimentel 2005, Li and Kawada 2006, Relyea and Diecks 2008, Baldwin et al. 2009).

CDFW recommends minimizing use of synthetic pesticides, and, if they are used, to always use them as directed by the manufacturer, including proper storage and disposal. Toxic pesticides should not be used where they may pass into waters of the state, including ephemeral streams, in violation of Fish and Game Code section 5650(6). Anticoagulant rodenticides and rodenticides that incorporate "flavorizers" that make the pesticides appetizing to a variety of species should not be used at cultivation sites. Alternatives to toxic rodenticides may be used to control pest populations at and around cultivation sites, including sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers), and physical barriers (e.g., sealing holes in roofs and walls). Snap traps should not be used outdoors as they pose a hazard to nontarget wildlife. Sticky or glue traps should be avoided altogether as these pose a hazard to nontarget wildlife and result in a prolonged/inhumane death. In addition, the California Department of Pesticide Regulation (CDPR) stipulates that pesticides must certain criteria to be legal for use on cannabis. For details, visit:

<https://www.cdpr.ca.gov/docs/cannabis/questions.htm> and
<https://www.cdpr.ca.gov/docs/county/cacfltrs/penfltrs/penf2015/2015atch/attach1502.pdf>.

The Draft ND states that pesticides may be used in the cultivation process, therefore CDFW recommends the following mitigation measure:

MM BIO-6: Prior to construction and issuance of any grading permit, Chief Farms, LLC shall develop a plan, to be approved by Inyo County, with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers". (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers), and physical barriers.

Artificial Light

Cannabis cultivation operations often use artificial lighting or "mixed-light" techniques in indoor operations to increase yields. If not disposed of properly, these lighting materials pose significant environmental risks because they contain mercury and other toxins (O'Hare et al. 2013). In addition to containing toxic substances, artificial lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., birdsong; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon that results in attraction and movement toward light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). The Draft ND does not address light usage on the Project, but typical cannabis cultivation projects include use of artificial light for nighttime function and security lighting. CDFW recommends the following mitigation measure:

MM BIO-7: Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. Ensure that lighting for cultivation

activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

Role of Lake and Streambed Alteration (LSA) Program in Cannabis Licensing

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may adversely impact any river, stream, or lake. An unnamed ephemeral stream has been mapped on the Project site using ArcGIS software and County Waterboard data, and according to the geotechnical survey the soil is primarily made of silty sand which may be evidence of alluvial water flow across the parcel. The California Department of Food and Agriculture (CDFA) requires cannabis cultivators to demonstrate compliance with Fish and Game Code section 1602 prior to issuing a cultivation license (Business and Professions Code, § 26060.1). To qualify for an Annual License from CDFA, cultivators must have an LSA Agreement or written verification from CDFW that one is not needed. Cannabis cultivators may apply online for an LSA Agreement through the Environmental Permit Information Management System (EPIMS; <https://epims.wildlife.ca.gov>). Cannabis cultivators may learn more about cannabis cultivation permitting at <https://wildlife.ca.gov/Conservation/Cannabis/Permitting>. CDFW recommends the following mitigation measure:

MM BIO-8: Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

Employee Awareness of Wildlife Resources

CDFW is concerned that large development projects in this area of Inyo County could have lasting impacts on local wildlife and plant species. The Project area is surrounded by open land, thus Project development will bring biological hazards common to urban-wildland interface areas. Waste management must be a priority as accessible waste can encourage opportunistic species such as rats, ravens, and coyotes to become more prevalent, posing a substantial predation hazard to wildlife. Predators like ravens (reported as present in the biological report) and coyotes (likely to occur in the area) are both known to prey on desert tortoise and MGS. Waste management plans should include waste receptacles with closing, lockable lids and a waste removal schedule that does not allow for excess waste to accrue. Increased traffic may also pose a hazard to species in the form of vehicle-animal collisions which often lead to the death of the animal. For slow moving species like

desert tortoise, busy roads or driveways in their territory can have a significant impact on populations.

Project activities, including construction and routine work for the life of the Project, will affect local wildlife. Part of the Project Proponent's responsibility is to educate individuals that will be on-site, whether they are employees of Chief Farms, LLC. or contractors, on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW recommends that the following Employee Education Program be added to the Draft ND as a mitigation measure:

MM BIO-9: A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The Employee Education Program should include, but not be limited to: (1) Best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area, (2) Protected species that have the potential to occur on the Project site including MGS, desert tortoise, rare and sensitive plants, and nesting birds, and (3) The location of the ephemeral stream that crosses from the west to the east side of the parcel and the importance of ensuring that no refuse or pollution enters the streambed habitat. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25739>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

The types of information reported to CNDDDB can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the Draft ND for Chief Farms, LLC. to assist Inyo County in identifying and mitigating Project impacts on biological resources. CDFW has assessed the Draft ND and found that does not adequately identify or mitigate for all of this Project's impacts on biological resources. CDFW recommends that prior to the adoption of this ND, Inyo County revise the document to include a more complete project description and assessment of impacts to biological resources on the Project parcel and adjacent parcels, as well as appropriate avoidance, minimization, and mitigation measures.

CDFW has Cannabis Unit staff who are available to provide guidance on identifying, minimizing, and mitigating impacts to biological resources and the future CDFW permitting that will be associated with this project. If you have any questions or would like to set up a meeting with CDFW staff to discuss this letter, please contact Kevin Francis, Environmental Scientist, at kevin.francis@Wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec: Kevin Francis, Environmental Scientist, CDFW
kevin.francis@wildlife.ca.gov

HCPB CEQA Program, Habitat Conservation Planning Branch
CEQAcommentletters@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measure	Schedule	Responsible Party
<p>MM BIO-1: MGS Preconstruction Surveys Preconstruction surveys for MGS following the <i>Mohave Ground Squirrel Survey Guidelines</i> (CDFG, 2010 or most recent version) shall be performed by a qualified biologist authorized by a Memorandum of Understanding issued by CDFW. The preconstruction surveys shall cover the Project area and a 50-foot buffer zone. Should Mohave ground squirrel presence be confirmed during the survey, the qualified biologist shall notify CDFW and the Project proponent shall obtain an ITP for Mohave ground squirrel prior to the start of Project activities.</p>	<p>No more than 14 days prior to any ground- or vegetation-disturbing Project activities</p>	<p>Chief Farms, LLC</p>
<p>MM BIO-2: Desert Tortoise A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with procedures described in Chapter 6 of the US Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an Incidental Take Permit (ITP) for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.</p>	<p>No more than 14 days prior to beginning any Project activities. Ongoing throughout Project activities.</p>	<p>Chief Farms, LLC.</p>
<p>MM BIO-3: Nesting Birds Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance activities. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found</p>	<p>Within 3 days of beginning any vegetation clearing or ground disturbing activities.</p>	<p>Chief Farms, LLC.</p>

<p>during the preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal shall occur outside peak breeding season (February 1 through September 1).</p>		
<p>MM BIO-4: Special Status Plants A thorough floristic-based assessment of special status plants and natural communities, following CDFW's <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities</i> (CDFW 2018) or most recent version shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project Area, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities. Should other special status plants or natural communities be present in the Project Area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site or whether on-site or off-site conservation is warranted to mitigate Project impacts. If successful transplantation of perennial species is determined by a qualified restoration specialist, the receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize and mitigate Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.</p>	<p>Prior to construction and issuance of any grading permit. Ongoing throughout Project activities.</p>	<p>Chief Farms, LLC.</p>

<p>MM BIO-5: Minimizing Impacts to Other Species A qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to move out of harm's way wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with authorization by CDFW shall move CESA-listed species.</p>	<p>Ongoing during Project activities.</p>	<p>Chief Farms, LLC</p>
<p>MM BIO-6: Pesticides Prior to construction and issuance of any grading permit, Chief Farms, LLC shall develop a plan, to be approved by Inyo County, with measures to avoid, minimize, or mitigate the impacts of pesticides used in cannabis cultivation, including fungicides, herbicides, insecticides, and rodenticides. The plan should include, but is not limited to, the following elements: (1) Proper use, storage, and disposal of pesticides, in accordance with manufacturers' directions and warnings. (2) Avoidance of pesticide use where toxic runoff may pass into waters of the State, including ephemeral streams. (3) Avoidance of pesticides that cannot be used on cannabis in the state of California, as set forth by the Department of Pesticide Regulation. (4) Avoidance of anticoagulant rodenticides and rodenticides with "flavorizers". (5) Avoidance of sticky/glue traps. (6) Inclusion of alternatives to toxic rodenticides, such as sanitation (removing food sources such as pet food, cleaning up refuse, and securing garbage in sealed containers), and physical barriers.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>Chief Farms, LLC.</p>
<p>MM BIO-7: Artificial Light Light shall not be visible outside of any structure used for cannabis cultivation. Employ blackout curtains where artificial light is used to prevent light escapement. Eliminate all nonessential lighting from cannabis sites and avoid or limit the use of artificial light during the hours of dawn and dusk, as these windows of time are when many wildlife species are most active. Ensure that lighting for cultivation activities and security purposes is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and</p>	<p>Ongoing throughout Project activities.</p>	<p>Chief Farms, LLC.</p>

<p>recycle lighting that contains toxic compounds with a qualified recycler.</p>		
<p>MM BIO-8: LSA Program Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, <i>or</i> the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>Chief Farms, LLC.</p>
<p>MM BIO-9: Employee Education Program A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The Employee Education Program should include, but not be limited to: (1) Best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area (2) Protected species that have the potential to occur on the Project site including desert tortoise, burrowing owl, rare and sensitive plants, and nesting birds, and (3) The location of the ephemeral stream that crosses from the east to the northwest side of the parcels and the importance of ensuring that no refuse or pollution enters the streambed habitat. Interpretation shall be provided for any non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.</p>	<p>Prior to any person performing work on-site. Ongoing throughout Project activities.</p>	<p>Chief Farms, LLC.</p>

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